4121.

BILL NO. S-78-07- 08

SPECIAL ORDINANCE NO. S- 115-78

AN ORDINANCE approving an Agreement with H. G. Kleeman Enterprises, Inc., for construction of a sanitary sewer.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the Agreement dated June 26, 1978, between the City of Fort Wayne, by and through its Mayor and the Board of Public Works and H. G. Kleeman Enterprises, Inc., for:

SHANNONSIDE - SECTION I

1. Main Sanitary Sewer	Beginning at Station 0 + 00 construct a 48" manhole over an existing 15" sanitary sewer. Station 0 + 00 is located approximately 7 feet North of the Northeast corner of lot #22 in Shannonside Sec. I, thence Westerly 1550 feet to a proposed manhole at Station 3 + 87, Station 7 + 57 and Station 11 + 50 on said sewer line; thence in a Northwesterly direction 165 feet to Station 17 + 15 there terminating at a manhole located approximately 10 feet Northwest of the Northeast corner of lot #43 in Shannonside consisting of 1715 ± L.F. of 8" Sewer.
2. Sanitary Lot #1	Beginning at a manhole located 7 feet North of the Northeast corner of lot #41 Shannonside thence North 155 feet to a manhole located 3 feet South of the Northeast corner of lot #2 Shannonside there terminating consisting of 155 ± L.F. of 8" Sewer.

of which the developer shall pay the entire cost and expense of the construction of said sewer, all as more particularly set forth in said agreement which is on file in the Office of the Board of Public Works and is by reference incorporated herein, made a part hereof and is hereby in all things ratified, confirmed and approved.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

Councilman

APPROVED AS TO FORM AND LEGALITY,

CITY ATTORNEY

Read the first time in full and on motion by Burns, seconded by Hinga, and duly adopted, read the second time by title and referred to the Committee on City Utilities (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19__, at _____ o'clock _____ M., E.S.T.

DATE: 7-11-78

Charles W. Westerman
CITY CLERK

Read the third time in full and on motion by Burns, seconded by Hinga, and duly adopted, placed on its passage.

PASSED (~~LOST~~) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
TOTAL VOTES	9	0			
BURNS	X				
HINGA	X				
HUNTER	X				
MOSES	X				
NUCKOLS	X				
SCHMIDT, D.	X				
SCHMIDT, V.	X				
STIER	X				
TALARICO	X				

DATE: 7-25-78

Charles W. Westerman
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL) (APPROPRIATION) ORDINANCE (RESOLUTION) No. R-115-78 on the 25th day of July, 1978.

ATTEST: (SEAL)

Charles W. Westerman
CITY CLERK

Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 26th day of July, 1978, at the hour of 11:30 o'clock A. M., E.S.T.

Charles W. Westerman
CITY CLERK

Approved and signed by me this 27th day of July, 1978, at the hour of 3 o'clock P. M., E.S.T.

Robert E. Armstrong
MAYOR

Bill No. S-78-07-08

REPORT OF THE COMMITTEE ON CITY UTILITIES

We, your Committee on City Utilities to whom was referred an Ordinance approving an Agreement with H. G. Kleeman Enterprises, Inc., for construction of a sanitary sewer

have had said Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance DO PASS.

PAUL M. BURNS - CHAIRMAN

JAMES S. STIER - VICE CHAIRMAN

VIVIAN G. SCHMIDT

WINFIELD C. MOSES, JR.

FREDRICK R. HUNTER

7-25-78
DATE

CONCURRED IN
CHARLES W. WESTERMAN, CITY CLERK

C

Memorandum

To BOARD OF WORKS Date 6/12/78

From PHILIP R. BOLLER

Subject SHANNONSIDE, SECTION I SANITARY SEWER AGREEMENT

COPIES TO:

Biggs

Attached for your review and approval is the necessary sanitary sewer agreement to serve the above development.

The actual sewer extension permit and bond reference will follow under separate cover.

Mr. Kleefman has expressed an interest in hand-carrying the agreement to Council for prior approval in order to expedite early development and would appreciate any consideration the Board could offer.

If there is any additional information, please feel free to contact Wickensheimer.

NOTED
☐ M.P.W.
☐ E.H.L.
☐ M.G.S.
Date

P.R.Boller C.W.

Philip R. Boller, P.E.
Chief Water Pollution Control Eng.

PRB/CW/ds
Att.

BOARD OF PUBLIC WORKS
JUN 13 1978

66-70-20
6-26-78

66-70-20
6-26-78

A G R E E M E N T

F O R

S E W E R E X T E N S I O N

THIS AGREEMENT made in triplicate this 26 day of June, 1978, by and between H. G. KLEEMAN ENTERPRISES, INC., hereinafter referred to as "Developer" and the CITY OF FORT WAYNE, INDIANA, an Indiana Muncipal Corporation, hereinafter referred to as "City", WITNESSETH:

WHEREAS, the Developer desires to construct a sanitary sewer described as follows:

SHANNONSIDE - SECTION I

1. Main Sanitary Sewer	Beginning at Station 0 + 00 construct a 48" manhole over an existing 15" sanitary sewer. Station 0 + 00 is located approximately 7 feet North of the Northeast corner of lot #22 in Shannonside Sec. I, thence Westerly 1550 feet to a proposed manhole at Station 15 + 50 located 7 feet North of the Northeast corner of lot #41 Shannonside, Section I, also constructing manholes at Station 3 + 87, Station 7 + 57 and Station 11 + 50 on said sewer line; thence in a Northwesterly direction 165 feet to Station 17 + 15 there terminating at a manhole located approximately 10 feet Northwest of the Northeast corner of lot #43 in Shannonside consisting of 1715 ± L.F. of 8" Sewer.
2. Sanitary Lat #1	Beginning at a manhole located 7 feet North of the Northeast corner of lot #41 Shannonside thence North 155 feet to a manhole located 3 feet South of the Northeast corner of lot #2 Shannonside there terminating consisting of 155 ± L.F. of 8" Sewer

In accordance with plans, specifications and profiles heretofore submitted to the City and now on file in the Office of the Chief Water Pollution Control Engineer of the City Utilities of the City, and known as Shannonside Section I, which plans and specifications and profiles are by reference incorporated herein and made a part hereof, which sewer will serve not only land in which the Developer has an interest, but also adjoining land areas.

WHEREAS, the entire cost of construction of said sewer is to be paid for by the Developer.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. CONSTRUCTION OF SEWER.

The Developer shall cause said sewer to be constructed and located in accordance with said plans, specifications, and profiles, all approved by the City, under private contract to be let within sixty (60) days after requisite City approval. All work and materials shall be subject to inspection by City and the right of City to halt construction if there shall be noncompliance therewith. Said sewer shall not be deemed permanently connected into the sewer system of City until final acceptance by City. Upon completion, said sewer shall become the property of City and City shall accept sewage therefrom, subject to such sewage service charges as may now or hereafter be regularly established by City, and all further maintenance thereafter shall be borne by City.

2. COST OF CONSTRUCTION.

The Developer agrees to pay the entire cost and expense of construction of said sewer, in cash, including engineering and City inspection fees, and to hold the City harmless from any liability for claims connected therewith.

3. AREA OF DEVELOPER.

Said sewer, when accepted by the City will serve the following described real estate, to be platted as SHANNONSIDE SECTION I.

DESCRIPTION OF
SHANNONSIDE, SECTION I

Part of Lots five (5), six (6) and seven (7) in BROWNING'S SUBDIVISION Of Kercheval Reserve in Township 31 North, Range 13 East, Allen County, Indiana, more particularly described as follows, to wit:

Beginning on the East line of said Lot seven (7) at a point situated 760.98 feet (11.53 chains), South 01 degrees - 14 minutes East from the Northeast corner of said Lot seven (7); thence South 89 degrees - 44 minutes West, on and along a line which, by deed, intersects the West line of said Lot five (5) at a point situated 8.80 chains North of the Southwest corner thereof, a distance of 1761.0 feet to the centerline of Maysville Road; thence South 24 degrees - 25 minutes West, on and along said centerline, a distance of 308.1 feet; thence North 89 degrees - 44 minutes East, on and along a line situated 280.0 feet South of and parallel to the initial course in this description, and on and along the North line of Valley Meadows, Section III, as recorded in Plat Book 37, page 39-41 in the Office of the Recorder of Allen County, Indiana, a distance of 1894.38 feet to the East line of Lot seven (7); thence North 01 degrees - 14 minutes West, on and along said East line, a distance of 280.0 feet to the point of beginning, containing 11.747 acres of land, more or less.

The area served will also include the undeveloped area described as follows:

Part of lots numbered five (#5) and six (#6) in Browning's Subdivision of Kercheval Reserve in Township 31 North, Range 13 East, Allen County, Indiana, more particularly described as follows:

Commencing at the intersection of the North line of lot number six (#6) in said Brownings Subdivision of Kercheval Reserve with the centerline of the Maysville Road, thence Southwesterly along the existing Centerline of Maysville Road, a distance of 672.2 feet to the point of beginning; thence continuing along the Centerline of Maysville Road, a distance of 152 feet to a point; thence Easterly with an interior angle of 67 degrees with the Centerline of Maysville Road, a distance of 217.27 feet to a point; thence Northeasterly and parallel to the Centerline of Maysville Road, a distance of 99.9 feet to a point; thence Northwesterly a distance of 202.7 feet to the point of beginning, containing 0.58 acres more or less and subject to road rights-of-way and easements.

As the Developer will pay for the cost of construction of said sewer as it pertains to the above described area, no charge or assessment is made by this Agreement against the above described real estate for the construction of said sewer by the present or future owners of said real estate except only as to such standard tap-in, inspection fees and monthly sewage treatment charges as are customarily charged by the City for connections to City sewer mains and treatment of sewage therefrom.

4. CHARGE AGAINST AREA.

An area connection charge of $500.00 per acre must be paid to the City at the time of connection. This area connection charge represents the oversizing cost expended by the City for the sanitary sewer, Pierson Ditch Interceptor, that provides service to SHANNONSIDE, SECTION I, and local charges of $2,239.49.

5. BOND.

This contract is subject to Developer furnishing a satisfactory Maintenance Bond for the value of the sewer which shall guarantee said sewer against defects for a period of one (1) year from the date of final acceptance of said sewer by the City.

6. LIMITATION ON USE.

Said sewer shall be constructed for disposal of sanitary sewage only, and neither the parties hereto, their successors, or assigns or any future owner of any land serviced by said sewer, shall at any time discharge or permit to be discharged or to flow into said sanitary sewer, any water runoff caused by natural precipitation or anything other than sanitary sewage or contaminated waste.

7. WAIVER OF RIGHT TO REMONSTRATE AGAINST ANNEXATION.

The Developer, for himself, his successors in title and assigns, waives and releases any and all rights which it may now or hereafter have to remonstrate against or otherwise object to, interfere with or oppose any pending or future annexation by City of any territory now or hereafter owned by him, as described in Article 3 herein, or hereafter served by said sewer or any extension thereof.

In further consideration and to induce City to execute and ratify this contract, said Developer, for himself and his successors and assigns, agrees by this contract to vest in City the permanent right at its discretion to annex to the City of Fort Wayne at any future time by duly authorized ordinance the said real estate described in Article 3 herein.

Developer further agrees that any deeds, contracts, or other instruments of conveyance made by the Developer, its successors or assigns, transferring or conveying any interest or title in and to any of the real estate described in Article 3 herein, shall contain the waiver and release provisions contained in the article, which provisions shall run with the land and the acceptance of the delivery of any such instrument from the Developer, his successors and assigns by any grantee, vendee, or contract purchaser, shall be made subject to the terms of this Agreement and shall constitute an acceptance of the foregoing provisions by said grantee, vendee, or contract purchaser and their successors in title.

The Developer further agrees to record an executed copy of this contract in the Allen County Recorder's Office within ten (10) days of its adoption and approval by the Common Council of City as hereinafter provided.

Any owner or owners of land which is now, or hereafter located outside the corporate limits of City who connect into the sewer constructed hereunder shall be deemed to thereby waive his, her, their, or its right to remonstrate against or otherwise object to, interfere with or oppose any pending or future annexation by City of such land or of the territory in which it is located or of the area served by said sewer.

8. GOVERNING STATUTE.

It is the intention of the parties hereto to utilize and take advantage of and apply to this Agreement the provisions of Sections 16, 17 and 18 of Chapter 128 of the Acts of 1967 of the State of

Indiana (I.C. 19-2-7-16, I.C. 19-2-7-17, and I.C. 19-2-7-18), the provisions of which Sections shall govern with respect to any matters not specifically outlined herein.

9. COUNCILMANIC APPROVAL.

It is understood and agreed that this contract is in all respects subject to approval by the Common Council of City, by duly adopted Ordinance, and if such Ordinance is not adopted within a period of ninety (90) days after execution thereof, this contract shall be null and void and of no further force and effect.

IN WITNESS WHEREOF, the parties have subscribed to this Agreement the day and year first above written.

ATTEST:

By: _____
Corporate Secretary

H. G. KLEEMAN ENTERPRISES, INC.

By: _____
Harold G. Kleeman, President

"DEVELOPER"

CITY OF FORT WAYNE, INDIANA

By: _____
Robert Armstrong, Mayor

BOARD OF PUBLIC WORKS

By: _____
Henry P. Wehrenberg, Chairman

By: _____
Ethel H. LaMar, Member

By: _____
Max F. Scott, Member

ATTEST:

_____
Clerk

Approved as to form and legality:

_____
Associate City Attorney

STATE OF INDIANA)
) SS:
COUNTY OF DEKALB)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Harold G. Kleeman, President of H. G. KLEEMAN ENTERPRISES, INC., who acknowledged the execution of the foregoing agreement for sewer extension as and for his voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal this 6 day of June, 1978.

Margaret E. Hartman
Margaret E. Hartman
Notary Public
Resident of DeKalb County

My Commission Expires:

November 15, 1980

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Robert Armstrong, Mayor; Henry P. Wehrenberg, Chairman of the Board of Public Works; Ethel H. LaMar and Max G. Scott, Members of the Board of Public Works, who acknowledged the execution of the foregoing agreement for sewer extension, as and for their voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal this 26 day of June, 1978.

Anne J. Fox
Notary Public
Resident of Allen County

My Commission Expires:

3/6/80

This instrument prepared by: H. Charles Winans, Attorney at Law
619 South Randolph Street
Garrett, Indiana 46738

4121

TITLE OF ORDINANCE SPECIAL ORDINANCE - AGREEMENT FOR SEWER EXTENSION - SHANNONSIDE, SECTION I

DEPARTMENT REQUESTING ORDINANCE BOARD OF PUBLIC WORKS S-78-07-08

SYNOPSIS OF ORDINANCE AGREEMENT FOR SEWER EXTENSION FOR SHANNONSIDE, SECTION I - FOR THE CONSTRUCTION OF A SANITARY SEWER TO SERVE ABOVE-DESCRIBED AREA, H. G. KLEEMAN ENTERPRISES, INC., DEVELOPER FOR THE PROJECT.

(AGREEMENT FOR SEWER EXTENSION ATTACHED)

PRIOR APPROVAL ACQUIRED ON JUNE 13, 1978

EFFECT OF PASSAGE CONSTRUCTION OF SANITARY SEWER TO SERVE NEW HOMES BEING CONSTRUCTED IN SHANNONSIDE, SECTION I.

EFFECT OF NON-PASSAGE INABILITY TO PROCEED AS PLANNED

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) DEVELOPER TO PAY ENTIRE COST AND EXPENSE OF CONSTRUCTION OF SAID SEWER

ASSIGNED TO COMMITTEE

EP

Cecil Whitlatch